

CEQA Improvement Advisory Group

February 23 Meeting

Digest Notes

I. Overview

Secretary Mike Chrisman: Governor Schwarzenegger asked Secretary Chrisman to conduct a comprehensive review of the California Environmental Quality Act. It is also the Governor's intention to propose legislation that eliminates regulatory and legal hurdles that limit the construction of new housing in California. Therefore the Advisory Group will follow a "two-track" process to provide the Administration with advice 1) in the short-term, on how to improve CEQA to increase housing production and 2) over the life of the project (through October 2005) on how to improve CEQA across all the areas in which it is applied (planning, housing, infrastructure, conservation, etc.). The Advisory Group is not asked to come to a decision or to a consensus, but to the extent that areas of convergence emerge through the dialogue, that will help move policy ideas forward. Research assistance to the project is provided by the Public Policy Institute of California and the USC Keston Infrastructure Institute. The California Center for Regional Leadership will assist in the facilitation of the Advisory Group and in conducting regional outreach dialogues to capture broad and diverse input to the Advisory Group discussions.

Cabinet members Fred Aguiar, Vickie Bradshaw and Sunne Wright McPeak offered opening remarks. Secretary Chrisman thanked the Advisory Group members for their participation and for the many thoughtful suggestions submitted in writing in advance of the meeting.

The Public Policy Institute of California (Michael Teitz and Elisa Barbour) made a PowerPoint presentation entitled "CEQA Reform: Issues and Options." A brief outline of topics covered is included in Attachment 1. The full PPIC paper will be available by the end of March and distributed to Advisory Group members.

II. Action items

- The next meeting of the Advisory Group will be held on March 15 in Sacramento (details to follow).
- Depending on the pace of the dialogue and available research, additional meetings may be held in May, over the summer and the fall, finishing up the work in October.
- The primary focus of the March 15 meeting will be the ideas presented in the Administration's paper "CEQA Improvement for Housing: Discussion Concepts." Members are encouraged to provide further feedback on the paper and additional ideas related to the three elements of the paper.
- The Administration commits to developing further refined language for the next meeting (to be circulated in advance).
- Further discussion of the long-term work of the Advisory Group and the associated research agenda will be brought back on March 15.

- Advisory Group members are encouraged to suggest additional members to diversify the membership, particularly with respect to ethnic and community interests.

III. Advisory Group Discussion: key themes, questions, and suggestions

- What are we trying to accomplish with CEQA, and what other development and conservation goals can we agree should be accomplished, but by other means?
- The fear of CEQA litigation by local governments and project developers is real and costly and includes projects that never moved forward as well as those mitigated.
- Project-level environmental review does not address larger area and regional development and conservation needs and interests.
- Differentiate the issues involving CEQA and urban infill from those involving “greenfill” and greenfield development (nature of public participation, time horizons, etc.).
- Are there a set of CEQA streamlining ideas on which ready agreement is possible? Look at existing statutory exemptions—how specifically can they be improved and added to?
- Should certain habitats be exempt from CEQA? Can we look at the Coastal Commission experience and determine if it should be extended to conservation in non-coastal areas?
- Are legislative exemptions the only strategy? What about waiver strategies?
- Greater certainty is wanted from those interested in conservation as well as development.
- Why is meeting housing needs a “growth-inducing” action rather than a growth-accommodating action?
- Infrastructure issues (transportation, water, etc.) and conservation have their own unique CEQA issues, and should be addressed (along with housing) in a comprehensive review process.
- How to balance “state interest” as expressed through standards and enforcement, and regional/local interest, where decisions are made and the consequences occur?
- CEQA carries the burden of inadequate planning processes. To return CEQA to its original intention requires consideration of means to improve planning (so as not to create a “void”).
- “Social goods” such as disclosure/transparency, public participation, cross-governmental collaboration (sometimes) and broader community benefit may be provided by CEQA in part because they are not provided in other processes.
- Better planning for development and conservation would help “unburden” CEQA—particularly as it “frontloads” environmental review at the plan level. But who will do such planning/review, at what level(s), and how will it be paid for?

- Better planning means also better connection of local to regional and better connection of plans to actual decisions.
- Voluntary, grassroots-based comprehensive and integrated planning projects have emerged in many localities and regions in recent years, but without state support (funding or regulatory recognition and support).
- There is planning improvement which also improves (unburdens) CEQA, and planning improvement necessary for its own sake.

ATTACHMENT 1

A Summary of key topics covered in a presentation made by PPIC's Michael Teitz and Elisa Barbour to the CEQA Improvement Advisory Group on February 23, 2005 (from notes taken by CCRL)

Overview

- What is CEQA?
- Evolution of CEQA: Impacts and Reactions
- Current Context for Reform
- Proposals and Ideas
- Conclusion

CEQA: A "Mini-NEPA"

- California's equivalent of the National Environmental Policy Act (NEPA) and the first of sixteen state "mini-NEPAs"
- Applies to all development proposals regulated by public agencies
- Requires mitigation of identified significant adverse environmental impacts "where feasible"

Key Characteristics as Originally Envisioned

- Decision making process to improve environmental quality through use of scientific data, analysis of alternatives and public transparency and accountability
- Projects as the focus of review, with local control respected
- Meant to achieve a balance of environmental, economic, and social goals

Review Process

- Determine if project is subject to CEQA
- Conduct initial study, resulting in either a negative declaration or an Environmental Impact Report (EIR)
- EIR evaluates adverse impacts, proposes mitigation or issues findings of "overriding consideration"

What Is CEQA?

Affects myriad aspects of public policy, elicits varied opinions depending on perspectives and experiences, from highly favorable to highly negative.

1980 to 2000: A period of broad debates and incremental reforms

- Debates have surged or subsided with the development demand and business cycles
- Empirical evidence is limited
- Actual legislative reform largely addressed court rulings and anecdotal complaints

CEQA's Impact on Development Approvals: uncertainty

- Uncertain requirements create delay and cost
- Reasons for uncertainty and inconsistency include flexible substantive standards; local discretion; and lack of coordinated state policies
- Trade-offs between certainty and flexibility exist. Flexibility may be valuable for different types of projects. Establishing uniform standards may be difficult and controversial

CEQA's Impact on Development Approvals: conflict

- Lead agencies "bullet-proof" EIRs to fend off legal challenge, thus adding to cost and delay
- Few projects result in EIRs, and fewer still in litigation ...
- But empirical information on the actual cost of conflict is limited

Major Reforms to Ease Impact on Development Approvals

- To streamline procedures: 1977, 1984 and 1993.
- To streamline litigation and preclude abuse: 1984 and 1993

Impact on Planning

- Numerous benefits are cited at project level. However, CEQA is poorly connected to wider planning processes. Locally, few communities integrate CEQA with advance planning. Requirements related to regional impacts are difficult to administer. State agency involvement is sometimes tardy and inconsistent.

Major Planning-Related Reforms

- Reforms have encouraged "tiering." Changes in 1979-85: Specific Plans, Program EIRs; in 1993: Master EIRS established.
- Counties use major tiering options more than cities

Obstacles and Objections to Tiering

- Legal, planning, environmental and funding mechanisms concerns.
- General Plans are much more costly than EIRs, but much more is spent annually on EIRS, mostly by project applicants

Impacts on the Economy and the Environment

Complaints about CEQA as a drag on the economy, and about unclear environmental benefits, but few or no empirical studies on CEQA impacts

Major Reforms To Clarify Policy Objectives and Strengthen Enforcement

- 1989: Public participation and review
- 1979: Balancing goals
- 1988: Environmental quality: mitigation monitoring
- 1994 and 1998: Expedite housing production

Population Growth Pressures Have Changed Context for CEQA

- Rapid growth
- Constraints on infrastructure investment
- Public backlash against growth
- Fiscal limits and environmental pressures

Governance Innovations During the Past Decade

- Bioregional environmental programs linked to land use and infrastructure (NCCP, watershed initiatives, ISTEA/Clean Air Act, CALFED, 4.4 Plan, RCIP, others)
- Infrastructure decision-making devolved for closer link with land-use planning (ISTEA, SB 45, regional Smart Growth strategies)
- State-level measures to promote coordination (AB 857, 5-Year State Capital Planning)

Housing Affordability Issues Add to Concerns About Land Use

- State policymakers want localities to produce more affordable housing
- Local fiscal realities sometimes conflict with this goal
- Pressure for reform to address these issues, but no movement thus far.

CEQA Critique Has Broadened

- Can CEQA as it is function effectively in the 2005 context?
- Growth pressures and absence of effective planning have produced unintended consequences. CEQA:
 - Takes on tasks it was not designed for and cannot achieve
 - Takes on issues unrelated to environmental quality
 - Is no substitute for good planning for the environment

Reconsidering CEQA's Key Elements

- As a process to improve decision-making and public accountability, CEQA appears to be effective at a local level, but not at the regional or inter-regional level
- Protects local control and discretion; does not facilitate regional collaboration or

objectives

- Project-level review, in absence of (in lieu of) planning level review is widely viewed as a problem
- Still: requiring balanced environmental, economic, and social goals remains vital, embodies smart growth principles though not at regional scale.

The Menu of Proposed Strategies for Reform Can Be Grouped Under Five Major Headings:

Improving Efficiency and Predictability *Without* Imposing Standards

- Streamline the litigation process
- Clarify terms and requirements
- Facilitate use of mitigated negative declarations
- Improve state agency oversight, guidance, review

Standardizing Threshold and Mitigation Requirements

- Through mandates or incentives?
- Inputs or outcomes?
- At local, regional and/or state level?
- Local discretion v. uniform state standards?
- Who pays for the work, what incentives reward outcomes?

Strengthening Tiering, Coordination, and Cumulative Impacts Analysis

- Ways to strengthen tiering
 - Consolidate options and requirements
 - Frontload review requirements, with certainty
 - Mandate consistent across tiers
 - Incentives: regulatory, legal, funding authority, fiscal
- Strengthen comprehensive planning and link to CEQA
 - Use CEQA exemptions as an incentive
 - Reform planning law to facilitate Master EIRs

Promoting the Administration's Near-Term Policy Objective: to Expedite Housing Development

- Expand exemptions under certain conditions
 - For infill and mixed-use, and/or
 - For all housing development
- What standards must be met? (Planning and/or substantive environmental standards)

Enacting CEQA Reforms Within a Larger Growth Policy Framework

- Require state-level, inter-agency policy coordination (AB 857)
- Through local and regional long-range comprehensive plans, encourage local governments to identify growth and conservation areas
- Use “tool-kit” to help direct development (CEQA exemptions; fiscal tools; boundary designation tools, infrastructure investments)

The Challenge for the Advisory Group and the Administration

- A comprehensive review approach can open a Pandora’s box of issues
- Tough issues for CEQA reform
 - Policy standards
 - Process reforms: tiering
 - Preserving the balance
- Larger “beyond CEQA” issues
 - Effective planning
 - Budget, fiscal and funding